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United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
MICHAEL MAHONEY,  
  
Defendant.

CASE NO. 2:22-CR-00128-JAM

MEMORANDUM REGARDING CHANGE OF  
PLEA HEARING

DATE: January 24, 2023  
TIME: 9:30 a.m.  
COURT: Hon. John A. Mendez

**MEMORANDUM**

The indictment in this case charges defendant Michael Mahoney with violations of 18 U.S.C. § 922(k) – possession of a firearm with an altered serial number (“Count One”), and 26 U.S.C. § 5861(d) – possession of an unregistered short-barreled shotgun (“Count Two”). The defendant has requested that the Court schedule a change of plea hearing in the above-captioned matter on January 24, 2023. The defendant has indicated that he plans to enter an “open” plea to the pending charges without any plea agreement with the government. To assist the Court with this “open” change of plea hearing, the government provides the information below concerning the elements of the charged offenses, the potential penalties for those charges, and the factual basis supporting the charges.

**I. ELEMENTS OF THE OFFENSES**

At a trial, the government would have to prove beyond a reasonable doubt the following

elements of the offenses to which the defendant is pleading guilty:

As to Count One, possession of a firearm with an altered serial number in violation of 18 U.S.C. § 922(k):

1. That the defendant knowingly possessed the Smith & Wesson .38 caliber revolver;
2. That the Smith & Wesson .38 caliber revolver had the importer's or manufacturer's serial number removed, obliterated, or altered;
3. That the defendant knew that the importer's or manufacturer's serial number had been removed, obliterated, or altered; and
4. That the Smith & Wesson .38 caliber revolver had been shipped or traveled in interstate or foreign commerce.

As to Count Two, possession of an unregistered short-barreled shotgun in violation of 26 U.S.C. § 5861(d):

1. That the defendant knowingly possessed the Sears & Roebuck 12-gauge shotgun with serial number 67659;
2. That the defendant was aware that this Sears & Roebuck 12-gauge shotgun was a short-barreled shotgun with a barrel of less than 18 inches in length; and
3. That the defendant had not registered this Sears & Roebuck 12-gauge shotgun with the National Firearms Registration and Transfer Record.

## **II. MAXIMUM SENTENCE**

### **A. Maximum Penalty**

As to Count One, the maximum sentence that the Court can impose is five years of incarceration, a fine of \$250,000, a three-year period of supervised release, and a special assessment of \$100. As to Count Two, the maximum sentence that the Court can impose is ten years of incarceration, a fine of \$10,000, a three-year period of supervised release, and a special assessment of \$100. In addition, the defendant may be ineligible for certain federal and/or state assistance and/or benefits, pursuant to 21 U.S.C. § 862.

### **B. Violations of Supervised Release**

If the defendant violates a condition of supervised release at any time during the term of

supervised release, the Court may revoke the term of supervised release and require the defendant to serve up to two years of additional imprisonment.

### III. FACTUAL BASIS

If this matter proceeded to trial, the United States would establish the following facts beyond a reasonable doubt:

On December 8, 2021, law enforcement executed a valid search warrant on the defendant Michael Mahoney's home in Fairfield, California. During the search, officers located the following items:

- a. Law enforcement found in an unlocked gun safe in the home's garage a Smith & Wesson .38 caliber revolver with the serial number obliterated/altered. According to an ATF interstate nexus expert, this Smith & Wesson revolver was originally manufactured outside of California and therefore traveled in interstate commerce. Moreover, at all relevant times, the defendant knew that this Smith & Wesson revolver was in his gun safe, and that its serial number had been obliterated/altered.
- b. In a rifle bag inside the same garage, law enforcement located a Sears & Roebuck short-barreled 12-gauge shotgun with the serial number 67659. The barrel measured approximately 12.75 inches, and the overall length of the shotgun was approximately 25.75 inches. At all relevant times, the defendant knew that this Sears & Roebuck 12-gauge shotgun was in a rifle bag inside his garage, and that the shotgun was a short-barreled shotgun with a barrel length of less than 18 inches. The defendant had not registered this Sears & Roebuck short-barreled 12-gauge shotgun with the National Firearms Registration and Transfer Record.
- c. In the garage gun safe, law enforcement also found an unregistered American Tactical rifle with the serial number NS171270. This rifle had a pistol grip, a detachable magazine, an adjustable stock, and a loaded 40-round magazine.
- d. Also in the gun safe, law enforcement found an unregistered Intratec Tec-9 9mm pistol with the serial number 125732. This pistol had a high-capacity magazine loaded with 29 rounds of ammunition.
- e. Law enforcement found in this same gun safe two items that appeared to be firearm suppressors or "silencers." Law enforcement later tested one of these suspected suppressors and determined that it was, in fact, a functioning "silencer."
- f. Finally, the gun safe contained a leather "sap" or billy club (which had the Hells Angels Deathhead logo as well as a 1% diamond and other Hells Angels Motorcycle Club symbols located on it), numerous high-capacity magazines, and approximately 1.1 grams of a suspected controlled substance.

1 After law enforcement officers located these items in the garage, they asked the defendant about  
2 the gun safe and its contents. The defendant stated that “it’s all mine.”  
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5 Dated: January 20, 2023

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7 By: /s/ AARON D. PENNEKAMP  
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